

1 UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 SAN FRANCISCO DIVISION

4 -----)

5 IN RE TESLA, INC.

6 SECURITIES LITIGATION Civil Action No.

7 3:18:cv-04865-EMC

8 -----)

9
10
11
12 REMOTE DEPOSITION OF JOSEPH FATH

13 New York, New York

14 July 12, 2021

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20
21
22
23
24 Reported by:

Linda Salzman

25 JOB NO. 196636

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 J O S E P H F A T H ,

12 called as a witness, having been duly

13 sworn by a Notary Public, was examined

14 and testified as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Could you start off by just

23 stating your full name and position at T.

24 Rowe Price?

25 A. Joseph Fath, F-A-T-H. I run the

1 growth stock fund here, and I'm
2 technically a vice president.

3 Q. And how long have you worked at
4 T. Rowe Price?

5 A. Since the intern in 2001. I
6 started full-time in August of 2002, so
7 going on 19 years.

8 Q. And you said you are the
9 portfolio manager for the U.S. Growth
10 Stock Equity Strategy Fund; is that
11 correct?

12 A. That's correct.

13 Q. Okay. Could you briefly
14 describe your responsibilities as a
15 portfolio manager for that fund.

16 A. Yes. I'm the lead portfolio
17 manager. Product now is about \$130
18 billion. I run retail money in the United
19 States, as well as I have separate account
20 clients, a number of different
21 institutions.

22 Our strategy is focused on large
23 cap U.S. growth equities, but we also
24 invest internationally. It's typically
25 companies over \$10 billion in market cap.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. And is one of your portfolio
19 companies Tesla?

20 A. It is not currently, but it was
21 at the time in question.

22 Q. Okay. So it was a portfolio
23 company in August 2018?

24 A. Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 Q. In talking about the August 2018
20 timeframe, was -- were you the T. Rowe
21 Price manager with the most amount of
22 contact with Tesla management?

23 A. Yeah. I've taken a lead as a
24 portfolio manager in electric vehicles and
25 autonomous driving. Even though we have

Q. So you had a general awareness in August 2018 of T. Rowe Price's overall position in Tesla?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]


[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[illegible]

13 A. I believe so.



[REDACTED]

17 MR. PORRITT: So I've placed
18 before the witness a document marked
19 as Exhibit 39.

[REDACTED]

23 MR. PORRITT: It is an email
24 dated July 19, 2018. It is
25 Bates-stamped TRP_000192.

1 Q. Do you have that in front of
2 you, Mr. Fath?

3 A. I do.

4 Q. Do you recognize this email?

5 A. I do.

6 Q. This is an email you received
7 from Martin Viecha on July 19, 2018?

8 A. Correct.

9 Q. In this email, Mr. Viecha refers
10 to a call that you were going to have.

11 Do you recall that call?

12 A. I do. I requested to have a
13 call directly with Elon Musk, the founder
14 and CEO of the company.

15 Q. And why did you request that
16 call?

17 A. Specifically related to the -- I
18 believe it was July 15th Tweet regarding
19 the situation in Thailand where the soccer
20 team was trapped in a cave, and he decided
21 to Tweet and call the individual that was
22 leading the rescue a pedophile.

23 Q. And why did that cause you
24 concern?

25 A. Clearly, reputational damage

1 potentially to Tesla and also the negative
2 press and implications for the individual
3 who was leading the company.

4 Q. Do you recall if that Tweet had
5 an influence on Tesla's stock price?

6 A. I don't recall at the time if it
7 did. I believe it did. Again, I have to
8 look at the exact date, but I believe it
9 did have a negative impact.

10 Q. And what do you recall
11 discussing with Elon Musk on this
12 telephone call?

13 A. Well, essentially, I told Elon
14 that he was in a position and had -- had
15 done a very good job utilizing Twitter and
16 other social media avenues to the benefit
17 of driving what was essentially free
18 marketing for the company and help the
19 brand. He had done a very good job at
20 that, particularly in the buildup of the
21 company.

22 During the Model 3 production
23 when they were having problems with
24 ramping production, there were a number of
25 Tweets related to the business and

1 non-related to the business that I thought
2 were clearly derogatory, inflammatory
3 issues that I thought would impact both
4 the company and its brand and him
5 negatively.

6 And I wanted to have a
7 conversation to express my views and relay
8 views from other portfolio managers and
9 folks at T. Rowe about that behavior.

10 Q. And what do you recall telling
11 Mr. Musk?

12 A. I specifically told him and
13 shared a story. And I didn't know how to
14 get through to Elon at the time.

15 But I specifically remember
16 telling him a story about Lindsay Lohan,
17 the actress, and I said if you recall,
18 Lindsay Lohan was constantly in the press
19 and the paparazzi was following her
20 looking for her to make a negative move.
21 And the more mistakes she made, the more
22 press it generated, and the more attention
23 it generated.

24 And I proceeded to tell him, do
25 you notice you don't hear about Lindsay

1 Lohan anymore? And he said yes. And I
2 said that's because she stopped giving the
3 paparazzi and the press news to follow and
4 write about. So I said you should take a
5 similar course and focus on things that
6 are boring, i.e. promoting the company,
7 and not instigating and, again, engaging
8 in derogatory kind of actions on Twitter,
9 Facebook, any social media avenues. He
10 typically uses Twitter.

11 And I was trying to get through
12 to him to appeal to his better judgment
13 and senses to use Twitter for good and not
14 bad.

15 Q. And what do you recall
16 Mr. Musk's reaction to your statements?

17 A. We had a good conversation. I
18 thought he was extremely receptive to the
19 views, and he said he wanted to do right
20 by his shareholders, his employees, and
21 his customers.

22 And I thought -- I felt good
23 after that call that I had gotten through
24 to him, and he had taken it under
25 advisement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. PORRITT: Yes, I see it.
7 So I'm placing before the
8 witness a document we will mark as
9 Exhibit 40. It is an email dated July
10 19, 2018, Bates-stamped TRP_000194.

[REDACTED]

[REDACTED]

[REDACTED]

14 Q. Do you see that, Mr. Fath?
15 A. I do.
16 Q. And is this an email you sent to
17 Elon Musk on July 19, 2018?
18 A. It is, post our call.
19 Q. So this call is referring to the
20 call you just testified about?
21 A. Correct.
22 Q. You see at the end of that, your
23 email, you say, "Take care in the interim
24 and remember the golden rule 'delete don't
25 Tweet.'" "

1 Do you see that?

2 A. Yep, I do.

3 Q. Do you recall giving that advice
4 to Mr. Musk during the call as well?

5 A. I do.

6 Q. And, again, do you recall what
7 Mr. Musk said, if anything, in response?

8 A. Again, broadly took it under
9 advisement. I thought he was extremely
10 receptive to the comments I had given him,
11 and I hoped to appeal to his better
12 senses.

13 Q. Do you follow Mr. Musk on
14 Twitter?

15 A. I do.

16 Q. Okay. Did you follow him at the
17 time in August of 2018?

18 A. I did.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 Q. Mr. Fath, if you could refer to
13 document Bates-stamped TRP_000002, I'm
14 marking as Exhibit 41.

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. It's an email from you to Robert
19 Marcotte dated August 7, 2018.

20 Do you have that in front of
21 you?

22 A. I do.

23 Q. And is this an email that you
24 sent on August 7, 2018?

25 A. It is.

1 Q. And who is Robert Marcotte?

2 A. He is one of our equity traders
3 internally at T. Rowe Price.

4 Q. Okay. You'll see below the
5 bottom of Exhibit 41 is an email -- looks
6 like an email from Mr. Marcotte to you
7 saying -- referencing "Musk Tweets. I'm
8 considering taking Tesla private at \$420."

9 Do you see that?

10 A. I do.

11 Q. Do you recall seeing a Tweet
12 from Mr. Musk that he was considering
13 taking Tesla private at \$420?

14 A. Oh, I absolutely do.

15 Q. Did you -- where did you first
16 see it?

17 A. I was laying in bed next to my
18 wife and kids in Nevis on vacation, and it
19 blew up my entire vacation and I'm lucky I
20 didn't get divorced. So I remember it
21 vividly.

22 Q. Okay. Did you see it across
23 Twitter?

24 A. I recall -- we were getting up
25 to head to the beach, and I recall my

1 phone was sitting on the nightstand and it
2 was buzzing incessantly and I picked it
3 up.

4 Didn't see it on Twitter, but I
5 saw -- he goes by Bobby -- Robert
6 Marcotte's email which wasn't just to me
7 but was to all the portfolio managers and
8 analysts that either owned Tesla or were
9 involved with Tesla. And that's where I
10 saw it initially.

11 Q. And what was your initial
12 reaction when you saw the Tweet from Elon
13 Musk?

14 A. Shock.

15 Q. Okay. Why?

16 A. Wouldn't expected a company with
17 -- effective where they were in their
18 lifecycle to be in a position to go
19 private at that point in their lifecycle.

20 Very rarely you see that occur
21 in a growth company that is in this case a
22 very capital-intensive business that's
23 still building, you know, its business in
24 its mode up. It was very unusual to see
25 that.

1 Q. Do you recall that the Musk
2 Tweet also mentioned the words "funding
3 secured"?

4 A. I do remember that.

5 Q. Okay. Do you recall what your
6 reaction was to seeing those words in his
7 Tweet?

8 A. Again, shock and surprise.
9 Again, at that price point, it would have
10 been a very healthy amount of capital you
11 would need to raise to take the company
12 private. So I was surprised.

13 And I know we'll talk about
14 following emails, but we all internally
15 tried to speculate who would have the
16 wherewithal to do that type of
17 transaction.

18 Q. And what was your interpretation
19 of the meaning of "funding secured"?

20 A. Just as it states. When I read
21 that, I assumed he had secured sources or
22 financial sources to fund a go-private
23 transaction.

24 Q. And what does it mean by
25 "secured" in your mind?

1 A. To have locked and loaded and no
2 question at all a hundred percent that you
3 have funding ready to go and you're
4 prepared to move forward with this
5 transaction.

6 Q. So we can talk to -- back to
7 Exhibit 41.

8 You start off mentioning that
9 you were on vacation in Nevis. Then you
10 say, "I just spoke to IR."

11 Do you see that?

12 A. I do.

13 Q. Who did you speak to in IR?

14 A. I believe I spoke to Martin
15 Viecha.

16 Q. Okay. Do you recall what Martin
17 Viecha told you?

18 A. He was as shocked as I was, and
19 I just, as you would as any portfolio
20 manager or analyst ask, I saw the Tweet.
21 Is there a press release coming with more
22 details?

23 And I got the sense they thought
24 the same thing I did, that that wouldn't
25 have been Tweeted unless there was

1 veracity to that statement.

2 But I got the sense -- and this
3 is me reading between the lines -- that
4 they were surprised as I was by the Tweet
5 and weren't prepared for it.

6 Q. So your next sentence here in
7 Exhibit 41 you say, "I got the sense
8 company is getting their ducks in order to
9 make a public statement but that this is
10 real."

11 Do you see that?

12 A. Yes.

13 Q. That accurately reflects your
14 impression derived from your conversation
15 with Mr. Viecha?

16 A. It does. The statement, as I
17 recall, was that they thought the same
18 thing I thought. If this was Tweeted out
19 the way it was and the specific language
20 it was Tweeted out, this must be -- be
21 something that was going forward and it
22 was real. That was my interpretation.

23 Q. The next sentence continues,
24 "The" -- and then this is capitals --
25 S-A-M for mother -A "investment news being

1 broken by FT seems like the catalyst for
2 him to Tweet this."

3 Do you see that?

4 A. I do.

5 Q. What is the SAMA referring to?

6 A. That stands for Saudi Arabian
7 Monetary Authority.

8 Q. Okay. What was this news broken
9 by FT, what is that referring to?

10 A. There was news that the Saudis
11 and a number of other Middle East nations
12 were looking to diversify from oil and
13 they had been rumored to be making an
14 investment in Tesla.

15 I can't remember the dollar
16 amount, but they had invested in the
17 public equity, and this was one of the
18 parties that had clearly the wherewithal
19 to conduct a go-private transaction if
20 they so chose.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 Q. Mr. Fath, you have Exhibit 8 in
4 front of you?

5 A. I do.

6 Q. Is this the Tweet that you were
7 previously testifying about that you saw
8 on August 7, 2018?

9 A. It was.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 MR. PORRITT: So I've placed
24 before the witness a document marked
25 as Exhibit 42.

1 It is an email dated August 7,
2 2018. It is Bates-stamped TRP_000006
3 through to 08.

4 Q. Have you had a chance to look at
5 Exhibit 42, Mr. Fath?

6 A. I have.

7 Q. Do you recognize it?

8 A. I do.

9 Q. This is an email you received
10 from amongst -- and others received from
11 Joel Grant?

12 A. Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 Q. If you can refer to -- in the
6 second paragraph on the top email of
7 Exhibit 42 Mr. Grant says, "If the bit
8 here is whether Elon is serious about
9 taking this private, then I think he is
10 definitely serious."

11 Do you see that?

12 A. Yes.

13 Q. Do you recall what your reaction
14 was to reading that sentence from
15 Mr. Grant?

16 A. A little surprised. I think it
17 was a similar reaction that I had when I
18 read the way the Tweet was worded that if
19 he was to state that, the likelihood of it
20 happening was very probable. I think that
21 was his read as well.

22 And as an analyst, right, you
23 get into a different situation here where
24 he has to pivot from the fundamentals of
25 the business to whether there is a chance

1 that the company gets acquired for 420 or
2 potentially even higher if there's more
3 interest from other companies out there.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q. So referring back to Exhibit 42,
14 Mr. Grant continues, "Every conversation
15 we have had with him, he has expressed
16 frustration with the public markets."

17 Do you see that?

18 A. I do.

19 Q. He's referring to conversations
20 with Mr. Musk?

21 A. Yes. Not just his conversations
22 but us, T. Rowe as a group, over the prior
23 months and years.

24 Q. Okay. Were you part of some of
25 those conversations?

1 A. Absolutely.

2 Q. And during those conversations,
3 did Elon Musk express frustration with the
4 public markets?

5 A. Yes.

6 Q. What did Mr. Musk say?

7 A. I don't recall the exact
8 wording, but there was, I think, clearly a
9 frustration of being under the microscope
10 as they were ramping production,
11 particularly with the Model 3, which was
12 their boldest project to date. And as esd
13 witnessed at the time, they had a lot of
14 difficulty in scaling production.

15 So he was frustrated, and this
16 goes back to the conversation we had had
17 on the phone where I mentioned the "delete
18 don't Tweet." A lot of this was of his
19 own doing because he created that
20 environment where the press would
21 constantly write, both accurately and
22 inaccurately, about all types of things
23 around Tesla and it created, you know,
24 really a firestorm of press activity
25 around the company, and he was frustrated

1 with that.

2 But my belief is he actually,
3 you know, fueled that also by his
4 Tweeting.

5 Q. In these conversations you had
6 with Mr. Musk, did he ever mention short
7 sellers?

8 A. I don't recall to us directly if
9 he made that comment. But very, you know,
10 very prolific comments about short sellers
11 publicly, and some came up on their public
12 earnings calls as well.

13 Q. When you said some came up on
14 their public earnings calls, what did you
15 mean by that?

16 A. Discussion about short sellers.
17 I alluded to this in my email response
18 back to him. ElecTek is an online
19 publication that talks a lot about
20 electric vehicles.

21 And I recall one earnings call,
22 I believe it was the one in August of '18,
23 where they were goading him on to continue
24 to be difficult or adversarial to short
25 sellers in the public domain, i.e. through

1 social media.

[illegible]

1 the witness a document previously
2 marked as Exhibit 13.

3 Q. Do you see that, Mr. Fath?

4 A. I do.

5 Q. Do you recognize this document?

6 A. I recognize that Tweet, yes.

7 Q. Okay. Do you recall when you
8 first saw that Tweet?

9 A. Again, it was a frenzy that day,
10 but I see it's August 7th. I remember
11 seeing it. But, again, I was on vacation.
12 I saw it sometime during the day.

13 Q. Do you recall reading the
14 statement there on the top of -- beginning
15 of the Tweet in Exhibit 13, "Investor
16 support is confirmed"?

17 A. Absolutely.

18 Q. Do you recall what your reaction
19 was to seeing those words?

20 A. Yes. I was shocked because I
21 said to myself, well, I know it's not us
22 because we haven't spoken to them.

23 Q. What was your understanding of
24 the meaning of the words "investor support
25 is confirmed"?

1 A. Well, with the funding secured
2 Tweet followed by this, that he had it
3 lined up, whatever investors that may be,
4 to support the transaction and be able to
5 take them private.

6 That was my, you know -- and
7 again, I think it just reinforced the
8 funding secured.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 MR. PORRITT: I've placed before
19 the witness a document marked as
20 Exhibit 44. It's an email dated
21 August 8, 2018, Bates-stamped
22 TRP_000012.

23 Q. Do you have that document in
24 front of you, Mr. Fath?

25 A. I do.

1 Q. Is this an email that you sent
2 on August 8, 2018?

3 A. Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. Okay. And why -- what was the
19 purpose of this email?

20 A. I think we were considering if
21 it were to go private and there was an
22 opportunity not to be taken out in cash,
23 and I think some of his prior Tweets
24 alluded to shareholders being able to go
25 private alongside of it, would we even

1 have an interest to do that if that came
2 to bear.

3 Q. And is that something you had
4 considered before?

5 A. Yes. We've been private
6 investors in our public mutual funds for
7 many years. I believe beginning back in
8 2007, we started private investing, as
9 well as public investing.

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. Looking at -- back to Exhibit 44
14 the second sentence, you write, "I know
15 some separate accounts would be disallowed
16 given charter and I have Bonnie working up
17 those numbers now."

18 Do you see that?

19 A. I do.

20 Q. What do you mean when you say,
21 "would be disallowed given charter"?

22 A. Some separate accounts have
23 mandates on their accounts that do not
24 allow privates, and so those accounts
25 aren't able to participate in a private

1 transaction.

2 So if we own Tesla in their
3 accounts publicly, we would have to
4 dispose of those shares upon a takeout
5 because those accounts would not be able
6 to go along privately if the company was
7 to go private.

8 Q. You next write, "Company is
9 reaching out to the large holders now.
10 Good chance I get a call from Elon
11 directly later in the week."

12 Do you see that?

13 A. I do.

14 Q. As of this time August 18, 2018,
15 11:11 a.m., had you spoken to Elon Musk
16 about this potential transaction?

17 A. I had not.

18 Q. Do you know if anyone from T.
19 Rowe Price had spoken to Elon Musk
20 directly about this transaction?

21 A. I know they did not. There's
22 emails that you have in your other
23 documentation.

24 His chief of staff, his name was
25 Sam -- I can't recall his last name --

reached out to me when I was in Nevis after the initial Tweets, and I knew right away that I needed to contact our head of equities, Eric Veiel, as well as our in-house counsel, which I did.

And I stepped back completely from them in case I did get this call and we would have needed to be restricted. So I turned it over to them to deal with it directly, and they handled all conversations from there.

So I know once that transpired, no one else in the organization, other than Eric and/or our in-house counsel, would have spoken to the company directly. I never spoke with Elon after that Tweet.

[REDACTED]

23 MR. PORRITT: So I've placed
24 before the witness a document marked
25 as Exhibit 46.

1 It is an email dated August 8,
2 2018, at 11:19 a.m. Bates-stamped
3 TRP_000016.

4 Q. Do you have Exhibit 46 in front
5 of you?

6 A. I do.

7 Q. Do you recognize this document?

8 A. I do.

9 Q. It's an email you received from
10 Scott Berg on August 8, 2018?

11 A. Correct.

12 Q. And what fund did Mr. Berg
13 manage?

14 A. Our Global Growth Stock Fund.

15 Q. And Mr. Berg writes, "I would
16 definitely still be interested in holding
17 a decent position in accounts that would
18 allow it. I fear many separate accounts
19 won't want to."

20 Do you see that?

21 A. I do.

22 Q. Where Mr. Berg writes, "Fear
23 many separate accounts won't want to,"
24 what did you understand he meant by that?

25 A. That if they go private, it

1 would be an illiquid security, and those
2 separate accounts don't either want to
3 hold those securities, those illiquid
4 private securities, or their mandate did
5 not allow them to do so.

6 Q. So in the event of Tesla going
7 private, what would happen in those
8 accounts?

9 A. They would need to -- that
10 public position, if it was taken out,
11 assuming, for \$420 in cash, they would
12 sell all those securities for those
13 accounts that would not be willing to
14 stick along as it went private, maintain a
15 position or a smaller position.

23 MR. PORRITT: So I'm placing
24 before the witness a document marked
25 as Exhibit 47.

1 It's an email dated August 8,
2 2018, Bates-stamped TRP_000017.

3 Q. Do you have that Exhibit 47 in
4 front of you, Mr. Fath?

5 A. I do.

6 Q. And is this is an email you
7 received from Don Peters on August 8,
8 2018?

9 A. Correct.

10 Q. What fund does Don Peters
11 manage?

12 A. He runs several funds, but
13 they're effectively tax-efficient funds, a
14 lot for private clients and some
15 institutional accounts.

16 Q. Did you have an understanding of
17 the size of his position in Tesla on
18 August 8, 2018?

19 A. I don't recall where he was then
20 with the size. He runs relatively smaller
21 products versus some of the others on the
22 platform.

23 So of the overall pool, he was
24 relatively de minimis amount of the
25 holdings on an absolute basis.

1 Q. And then Mr. Peters writes, "It
2 is unlikely I would want to continue on
3 the private side."

4 Do you see that?

5 A. I do.

6 Q. Do you recall -- did you get a
7 response from all the recipients of this
8 email that you sent on August 8, 2018?

9 A. Unfortunately, I usually don't.
10 You get some and some you don't. Others
11 may have communicated their intentions
12 directly to the trading desk.

13 That's why I copied those folks
14 including Phil Nestico, Mike Blandino, and
15 Todd Skacan. They're three of the
16 individuals on the bottom of the cc line
17 in this email -- or exhibit that you're
18 referencing.

19 Q. Right. Do you recall in general
20 what percentage of T. Rowe Price
21 investment in Tesla would be able to
22 participate in a private Tesla?

23 A. I don't. I don't. But it was a
24 reasonably large percentage of our overall
25 holdings. And let me frame that for you.

22 A. Yes, that's correct.

☐ ☐ _____

[REDACTED]

[REDACTED]

3 MR. PORRITT: I've placed before
4 the witness a document marked as
5 Exhibit 50.

6 It's an email dated August 8,
7 2018. It is Bates-stamped TRP_001609
8 to 1611.

9 Q. Do you have Exhibit 50 in front
10 of you, Mr. Fath?

11 A. I do.

12 Q. Is this an email you sent on
13 August 8, 2018, at 6:13 p.m.?

14 A. Correct, I did.

15 Q. And it's sent to Bill Weeks; is
16 that correct?

17 A. That is correct.

18 Q. And who is Bill Weeks?

19 A. Bill is a member of our public
20 relations department.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. Why did you notify Mr. Weeks at
23 that point?

24 A. Well, I think there was a debate
25 at the time. Again, the SEC was

1 clearly -- started an investigation, I
2 believe, or there was some news on that
3 front.

4 I know when the investigation
5 started. It was Wednesday, August 8th.
6 But there had been a debate in the past
7 about whether to put out material
8 nonpublic information in the form of a
9 Tweet, whether that was considered a fair
10 dissemination of information and whether
11 it was broad dissemination of information.

12 And I was referring to the
13 ruling -- I noted this earlier -- but not
14 specifically to the ruling around Reid
15 Hastings, who was the CEO at Netflix at
16 the time, that the SEC did allow that.

17 So that wasn't the issue. We
18 thought the SEC's inquiry, or at least I
19 did, was probably more around the
20 statement that he had the funding secured
21 and lined up and that that's what the SEC
22 would be probing.

23 Q. And the fact that the SEC was
24 probing whether or not he has the funding
25 lined up, as you say in Exhibit 50, what

[REDACTED]

[REDACTED]

3 Q. Did you participate in a
4 conversation with Elon Musk regarding the
5 go-private transaction?

6 A. I did not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. And you believe Mr. Veiel went
17 on to have a conversation with Mr. Teller?

18 A. I don't know. I removed myself
19 from the situation. And when we do that
20 and it gets handed over, it's best for me
21 not to know. And so, again, being on
22 vacation and being remote, I stepped out
23 after that.

24 Q. Okay. What about Mr. Grant, do
25 you know if he had a conversation with

1 Mr. Teller?

2 A. I do not know.

3 Q. Okay. What about, did Mr. Grant
4 ever speak with Elon Musk about the
5 go-private transaction?

6 A. I have no knowledge if he did or
7 did not.

8 Q. And what about Mr. Spencer, do
9 you know if he had a conversation with
10 Mr. Teller?

11 A. I don't know.

12 Q. And did he ever have a
13 conversation with Elon Musk?

14 A. I do not know.

15 Q. Okay. Did you ever speak to
16 Mr. Veiel about his conversation with
17 Mr. Teller?

18 A. I did not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. Do you recall -- what do you
9 recall next following your return from
10 vacation about the Tesla go-private
11 transaction?

12 A. Well, I think as the days passed
13 and given they were reaching out, I think
14 I became much more suspicious that the
15 funding was secured and that, you know,
16 they were clearly probably trying to set
17 up funding to consummate the transaction.

18 But I don't recall the
19 conversations that ensued in the days that
20 followed.

21 Q. So what's the basis for the sort
22 of understanding that you just described?

23 A. Well, I think that email that
24 you referenced before this, him just
25 reaching out and wanting to speak with me,

1 started to raise yellow flags in my mind
2 that a deal was done.

3 If a deal had been done and
4 funding had been secured, why reach out to
5 us.

[REDACTED]

23 Q. When do you recall first
24 reaching the conclusion that the
25 go-private transaction was probably not

1 going to go forward?

2 A. I can't recall the exact date.

3 But as details like this came out, it
4 became more and more clear that, you know,
5 it wasn't going to come to fruition.

6 But I don't remember when that
7 initially dawned on me. I'd say, as I
8 noted earlier, that first yellow flag was
9 kind of him and his team reaching out to
10 us.

[REDACTED]

[REDACTED]

13 Did you ever have any
14 conversation with anyone at Silver Lake
15 regarding the go-private transaction for
16 Tesla?

17 A. I did not.

18 Q. Do you know if anyone at T. Rowe
19 Price had any conversations with anyone at
20 Silver Lake?

21 A. I do not.

22 Q. What about with Goldman Sachs,
23 do you recall if you had any conversations
24 with anyone at Goldman Sachs regarding the
25 Tesla go-private transaction?

1 A. I did not have conversations.

2 Q. Do you know if anyone at T. Rowe
3 Price had conversations with anyone at
4 Goldman Sachs regarding the Tesla
5 go-private transaction?

6 A. I have no knowledge if they did
7 or did not.

8 Q. Finally, do you recall, did you
9 have any conversations with anyone from
10 Morgan Stanley regarding the Tesla
11 go-private transaction?

12 A. I did not.

13 Q. Do you know if anyone else at T.
14 Rowe Price had any conversations with
15 anyone at Morgan Stanley regarding the
16 Tesla go-private transaction?

17 A. I have no knowledge.

18 Q. Do you recall that Tesla put out
19 a press release announcing that it was --
20 that the go-private transaction was no
21 longer being considered by Elon Musk and
22 the board?

23 A. I don't remember the date, but I
24 do remember that.

25 Q. Okay. Do you recall what your

1 reaction to that press release was?

2 A. I don't. Frustration most
3 likely, given how tumultuous it had been
4 and how much time it had taken for
5 something that was initiated as a
6 go-private, and then there was no
7 substance behind it once they put out that
8 statement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 So I think you told Mr. Porritt
10 that in the first quarter of 2019, your
11 fund either completely or largely exited
12 its position in Tesla stock.

13 Did I recall that correctly?

14 A. My fund did, correct. I want to
15 clarify something that I didn't clarify
16 earlier. Sometimes I have substitute
17 securities and, in some cases, when we own
18 privates in other electric vehicles
19 companies, when separate accounts cannot
20 own those, Tesla will be a sub, substitute
21 security for them.

22 So I may have small positions in
23 some of the separate accounts in Tesla. I
24 know I stated earlier that I had
25 eliminated it. I always look at

1 everything from my master fund, which is
2 my 40F vehicle. So I had eliminated it
3 from my 40F vehicle, that's correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 So do you recall why you made
10 the decision to exit Tesla stock for the
11 main fund in Q1 of 2019?

12 A. Yes. I mean a big part of it
13 and a big part of what we do here is
14 investing behind management teams that we
15 think have vision and foresight and also
16 have a steady hand.

17 And to be completely honest,
18 what transpired in '18 gave us a lot less
19 confidence in Elon Musk's leadership, as
20 well as we had seen, you know, some
21 turnover start to occur inside the
22 organization for people that we thought
23 were very talented, and so that was part
24 of it.

25 I think there was also concern

1 around the fundamentals of more around the
2 supply side, less around the demand side.
3 We'd always been bullish on the prospects
4 for electric vehicles and the prospects
5 for what, you know, Tesla could do if they
6 could deliver the vehicles and actually
7 ramp up production.

8 We became more and more
9 concerned that the company had
10 over-automated. And I think we saw what's
11 happened with -- as you may know, but I'll
12 state it -- General Assembly 4, which was
13 virtually a manual operation to assemble
14 the vehicles that they launched to try to
15 start ramping up production.

16 So it was two-fold. We were
17 losing confidence in leadership and also
18 concern around the ability to ramp up
19 supply and production.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 You discussed the content of the
3 Tweet with Mr. Porritt a little bit. I
4 wanted to just follow-up on that.

5 Were you aware that as of August
6 2018, various analysts were interpreting
7 the phrase "funding secured" in different
8 ways?

9 A. I did not.

10 Q. Does the term "funding secured"
11 by itself indicate whether or not there is
12 a written or a verbal commitment?

13 A. No. But, again, it was my
14 interpretation, given he had stated it.

15 Q. What was your interpretation?

16 A. That he had secured funding and
17 he was ready to close a private
18 transaction.

19 Q. Okay. But secured funding could
20 mean a verbal commitment, could mean a
21 written commitment; is that right?

22 A. That's correct.

23 Q. And as you sit here today, do
24 you know whether Mr. Musk actually had a
25 verbal commitment for funding as of the

1 time he sent the August 7th Tweet?

2 A. I do not, no.

3 Q. Towards the end of your
4 conversation with Mr. Porritt -- well,
5 actually, let me -- before I move on, do
6 you understand that this case involves
7 claims of fraud against Mr. Musk and
8 Tesla?

9 A. I'm not aware exactly what the
10 class action lawsuit is -- entails. I do
11 not.

12 Q. Okay. Do you have any personal
13 knowledge of whether or not Mr. Musk
14 actually believed what he said in the
15 August 7th Tweet when he said it?

16 A. I do not.

17 Q. Okay. Towards the end of your
18 conversation with Mr. Porritt, you were
19 talking about the press release in which
20 the company announced that it was no
21 longer pursuing a potential take-private
22 transaction at that time.

23 Do you recall that?

24 A. I do.

25 Q. And I think in your conversation

1 with Mr. Porritt, you referred to the
2 take-private proposal having no substance
3 behind it or something to that effect.

4 Do you recall that?

5 A. I do.

6 Q. And when you say no substance
7 behind it, do you mean anything other than
8 the fact that the transaction did not
9 proceed?

10 A. I do not.

11 Q. Okay. So in other words, there
12 could be a transaction proposal that has
13 substance but ultimately doesn't turn into
14 a transaction, correct?

15 [REDACTED] [REDACTED]
16 A. Very possible.

17 Q. And there could be a
18 take-private proposal where funding is
19 secured, but a transaction might not end
20 up occurring for all sorts of reasons,
21 correct?

22 [REDACTED] [REDACTED]
23 A. Correct.

24 Q. And do you have personal
25 knowledge of why Mr. Musk and the Tesla

1 board ultimately decided not to pursue
2 this potential take-private transaction?

3 A. I do not.

4 Q. Do you have any personal
5 knowledge of whether the availability of
6 funding for the potential transaction was
7 or was not a factor in the decision by Mr.
8 Musk and the board not to pursue it any
9 further?

10 A. I don't.

11 Q. In your discussion with
12 Mr. Porritt, you alluded to the email from
13 Mr. Teller reaching out and asking to have
14 a conversation about the potential
15 go-private transaction, and I think you
16 characterized that email as something of a
17 yellow flag to you.

18 Do you recall that?

19 A. I do.

20 Q. Do you recall early on in this
21 process, on or about August 7th or 8th,
22 Mr. Musk indicating that he was only
23 interested in proceeding with this
24 transaction if the company's existing
25 shareholders were supportive of it?

1 A. I do remember him saying that.

2 Q. And if the purpose of Mr. Teller
3 reaching out to you to discuss the
4 potential transaction was simply to gauge
5 whether or not your fund as a shareholder
6 would be supportive of the proposed
7 transaction, would that indicate a yellow
8 flag as to whether or not funding was
9 secured?

10 A. No, it wouldn't if that's what
11 the case was. But again, as you see and
12 as we discussed, I removed myself from
13 those conversations, so I wasn't privy to
14 that.

15 Q. Okay. So you don't actually
16 know whether that was the purpose for that
17 reach-out from Mr. Teller to you?

18 A. That's correct. Could have
19 been.

20 Q. In some of your email
21 correspondence at the time which you
22 discussed with Mr. Porritt, you expressed
23 the view, in words or substance, that you
24 believed that the proposed transaction was
25 real, the proposal or the idea was a real

1 one.

2 Do you recall that?

3 A. Correct.

4 Q. Did you ever conclude that it
5 was not a real bona fide proposal?

6 A. Since I concluded that it was
7 not, when the board and the company
8 decided not to move forward with it, that
9 was my assumption.

10 Q. But you would agree with me that
11 there could be a real bona fide proposal
12 that does not end up resulting in the
13 transaction, correct?

14 A. Correct.

A horizontal bar chart consisting of 10 solid black bars. The bars are arranged in descending order of length from top to bottom. The lengths vary significantly, with the third bar from the top being the longest and the sixth bar being the shortest.

Bar Index (from top)	Relative Length (approximate percentage of the longest bar)
1	85%
2	95%
3	100%
4	45%
5	88%
6	25%
7	98%
8	35%
9	92%
10	55%

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. Okay. So I just want to be --
7 well, following up on my last question,
8 what I was going to ask is, in other
9 words, you could have a proposal to take a
10 company private that is real and is bona
11 fide, but that proposal might not end up
12 maturing into a completed transaction for
13 any number of reasons, correct?

14 A. That's correct.

15 Q. Okay. Looking back at Exhibit
16 8, if you still have that in front of you.

17 A. Okay.

18 Q. So the Tweet says, "Am
19 considering taking Tesla private at \$420."

20 You don't have any information
21 suggesting that Mr. Musk was not, in fact,
22 considering taking Tesla private at that
23 point in time, do you?

24 A. I do not.

25 Q. And you don't have any

1 information suggesting that he was not, in
2 fact, considering taking it private at a
3 price of \$420 per share, correct?

4 MR. PORRITT: Object to form.

5 A. Correct.

6 Q. And you don't know what
7 information Mr. Musk had in mind when he
8 referred to "funding secured," do you?

9 A. I do not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. Okay. And you spent some time
23 talking to Mr. Porritt about views that
24 Mr. Musk had expressed about short
25 sellers.

1 Do you recall that topic?

2 A. I do.

3 Q. And I think you said, in
4 substance, Mr. Musk had expressed
5 frustration in many venues about short
6 sellers; is that correct?

7 A. I do.

8 Q. Have you ever spoken to any
9 other public company CEO who expressed
10 frustration with short sellers?

11 A. Many.

12 Q. Pretty common view among public
13 company CEOs?

14 A. Yes, indeed.

15 Q. And along a similar vein, you
16 described some instances in which Mr. Musk
17 expressed frustrations at managing a
18 company that is subject to the public
19 markets.

20 Do you recall that subject?

21 A. Correct.

22 Q. Can you elaborate on that a
23 little bit about what kinds of things he
24 expressed frustration about being a public
25 company?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Let me ask you to take a look at

16 Exhibit 13, which you also discussed with

17 Mr. Porritt, please.

18 A. Okay.

19 Q. In this Tweet also on August 7,

20 2018, Mr. Musk writes, "Investor support

21 is confirmed."

22 Do you see that?

23 A. I do.

24 Q. And I think when you spoke to

25 Mr. Porritt about this Tweet, you said

1 that you interpreted the statement about
2 investor support being confirmed as
3 essentially reiterating what he had said
4 about funding secured in the Tweet we just
5 looked at previously; is that correct?

[REDACTED]

[REDACTED]

8 A. Correct.

9 Q. So in other words, the reference
10 to investor in this Tweet, you understood
11 that to be a reference to the investors
12 who might provide capital for a
13 going-private transaction, rather than a
14 reference to the company's then-existing
15 shareholders; is that correct?

[REDACTED]

[REDACTED]

18 A. That's correct.

19 Q. As you sit here today, do you
20 have an understanding of what it was that
21 Mr. Musk was referring to when he said
22 "funding secured" or "investor support
23 confirmed"?

24 A. I still do not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. So I've had marked as Exhibit 53
21 a copy of a blog post that's dated August
22 13, 2018. It's titled "Update on Taking
23 Tesla Private."

24 And I'll just represent to you
25 that the company actually Tweeted out a

1 link to this blog post on August 13, 2018.

2 You can ignore the date on the upper
3 left-hand corner. That's a print date.

4 So, Mr. Fath, take as much time
5 as you need to look over the document.

6 But my first question is just going to be
7 whether you remember reading this blog
8 post on or about August 13th of 2018.

9 A. I do. I mean, I haven't read it
10 all, but reading the first several
11 paragraphs, yes.

12 Q. So given the significance of
13 what was going on at the time, if the
14 company had Tweeted out a link to a blog
15 post discussing the potential transaction,
16 is it fair to assume that you would have
17 read it fairly soon after it was
18 published?

19 A. Absolutely.

20 Q. Okay. Let me ask you to scroll
21 down to the section with the heading that
22 says, "Why did I say, 'funding secured?'"

23 Do you see that?

24 A. I do.

25 Q. Do you recall reading this part

1 of the blog post on or about August 13th
2 of 2018?

3 A. I do.

4 Q. Okay. Do you recall what your
5 reaction was at the time?

6 A. Well, I referred to them being a
7 potential prospect in earlier emails that
8 we discussed prior to this conversation.

9 So there was only a handful of
10 parties that outside of existing holders
11 that would have the wherewithal to do
12 this, and the Saudi Arabian -- the SAMA,
13 Saudi Arabian Sovereign Wealth Fund was
14 one of them. So I wasn't shocked.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]